

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JOHN W. CARROLL,	)	
	)	
Plaintiff,	)	8:04CV240
	)	
v.	)	
	)	
I.C.S. A.O.I. CONSTRUCTION,	)	MEMORANDUM AND ORDER
	)	
Defendant.	)	
	)	

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Plaintiff has moved for additional time in which to respond to outstanding discovery requests originally served on plaintiff when he was unrepresented by counsel in February, 2005. The motion has been filed in apparent response to the defendant's motion to compel, filing 35, and the motion admits no responses have been served. By delaying his responses, plaintiff has waived any objections to the requests. In addition, his answering now will not moot the motion's request for expenses and fees. See Fed. R. Civ. P. 37(a)(4)(A). Accordingly,

IT THEREFORE HEREBY IS ORDERED:

1. Defendant's motion to compel, filing 35, is granted in part, and the plaintiff shall serve his answers to the outstanding discovery requests on or before July 27, 2005. In addition, unless otherwise agreed by counsel, plaintiff shall make himself available for deposition by defendant's counsel, in OMAHA, Nebraska, on or before August 1, 2005.

2. Defendant is awarded its expenses, including attorneys fees, in bringing this matter before the court. Counsel shall confer regarding the amount of expenses and fees to be awarded, and if they agree shall file on or before July 27, 2005, a stipulation for an award in that amount. In the event they cannot agree on an amount, defendant is given until August 1, 2005 to file its application for expenses and fees, properly documented and supported. If such an application is filed, plaintiff shall have until August 8, 2005 to file his response. In the event either party desires a hearing, request therefor may

be made in the application or the response, as applicable. In the absence of a stipulated award or an application for an award, the court will award the amount of \$400.00.

3. The clerk shall make the amount awarded in accordance with the foregoing paragraph a part of the judgment eventually entered in this case, unless at or before the time judgment is entered, the clerk is notified in writing that the amount has been paid, and is given written evidence of such payment.

4. Plaintiff's motion for additional time to respond, filing 40, is denied as moot.

DATED this 15<sup>th</sup> day of July, 2005.

BY THE COURT:

s/ *David L. Piester*

David L. Piester  
United States Magistrate Judge